Dewan Pemuda Masjid Malaysia v SIS Forum (Malaysia)

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO S-24–598 OF 2010
ZABARIAH MOHD YUSOF J
14 JANUARY 2011

Civil Procedure — Locus standi — Matters pertaining to public law — Application to prohibit respondent from using the name of 'Sisters in Islam' — Allegation that respondent contravened provisions of Companies Act 1965 and teachings of Islam — Whether claimant's private rights not impacted — Whether claimant had locus standi to bring claim

Civil Procedure — Locus standi — Principles applicable — Whether claimant has interest in issues raised in proceedings — Whether private claimant may rely on or represent public right

Civil Procedure — Striking out — Action — Whether reasonable cause of action disclosed — Whether action frivolous, vexatious and an abuse of process of court — Claimant commencing proceedings based on contravention of public law — No loss or injury to claimant's private interest — Whether claimant had basis for commencing proceedings — Whether action ought to be struck out

The applicant was established to uphold the religion of Islam and maintain the sanctity and the holiness of the teachings of Islam. The respondent was registered on 10 June 1993 with the Companies Commission as 'SIS Forum (Malaysia)' with the objective of upholding the rights of women in Islam and society. The originating summons herein was filed by the applicant to seek, inter alia, the following orders: (i) that 'Sisters in Islam' was not the legal and valid name of the organisation of the respondent; (ii) that the respondent was prohibited from using the name of 'Sisters in Islam' in any correspondence or publication; and (iii) that the respondent remove the name 'Sisters in Islam' from the respondent's website, printed materials and publications. The applicant submitted that the respondent using the name of 'Sisters in Islam' had made statements that contravened the basic teachings, principles and laws of Islam. The applicant also contended that by using the name of 'Sisters in Islam', the respondent portrayed itself as an Islamic organisation or that it had been approved by Islam. This, according to the applicant had confused the public in Malaysia as well as to the international community, whilst in actual reality, that name was not registered with the Companies Commission Malaysia. The applicant further argued that, by illegally using the name of

'Sisters in Islam' the respondent had created, inter alia, public confusion, chaos and resistance in the community, as well as humiliation towards Islam and Muslims in Malaysia. The respondent applied to strike out the originating summons under O 18 r 19(1)(a), (b) or (d) of the Rules of the High Court 1980.

Held, allowing the respondent's application with costs:

(1) The matter complained of by the applicant was in relation to the contravention of the provisions of Companies Act 1965. These were clearly matters pertaining to public law. The proper authority that should be enforcing any contravention against the relevant laws would be the public authority, ie the Companies Commission Malaysia ('CCM'), which is empowered and authorised by the relevant laws that relate to the matter. Further, the applicant's complaint with regards to the occasions where the respondent made statements which contravened the basic tenets and teachings of Islam, were matters pertaining to the administration of Islamic issues which fall within the purview of the Majlis Agama Islam Wilayah Persekutuan. The applicant was not the public authority that was entrusted with the enforcement of the provisions of the Companies Act 1965 nor in the administration of Islamic matters (see paras 15–16, 18).

(2) It is trite law that the issue of locus standi is governed by two fundamental rules: (i) The plaintiff must possess an interest in the issues raised in the proceedings; and (ii) Where the private plaintiff relies upon a public right interest and not of a private right, standing will be denied unless the attorney general consents to a relator action, or the plaintiff can demonstrate some special interest beyond that possessed by the public generally. It is a fundamental principle that private rights can be asserted by individuals, but public rights can only be asserted by the attorney general as representing the public. The courts have no jurisdiction in any circumstance to clothe a plaintiff with the right to represent the public interest (see paras 34–35); *Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12 referred.

(3) Since the applicant failed to establish that it had suffered injury and loss that affected its private interest directly, the applicant had no basis of commencing proceedings against the respondent. Nor was there shown of the existence of any special damage peculiar to itself owing to the alleged interference of a public right that gave the applicant an interest to seek a declaration and/or any order within this action (see para 46).

(4) There was no privity between the applicant and the respondent, be it contractual or in tort, that entitled the applicant to obtain a remedy against the respondent from the court, as there was no proof of any injury or loss that was caused to the applicant by the alleged acts of the

respondent. There was no factual assertion nor any factual situation shown to the court that entitled the applicant for any remedy from the court, as a result of its rights that had been breached (if any). Therefore, clearly the applicant had not disclosed a reasonable cause of action against the respondent (see paras 68, 70–71).

(5) There was no proof of societal chaos nor confusion amongst the Islamic community, be it on a national level or internationally, that was allegedly caused by respondent's use of the name 'Sisters in Islam' and its publicised views on matters pertaining to Islamic matters. Hence these claims and allegations are unfounded, and clearly frivolous and vexatious. The action was certainly an abuse of process of the courts (see para 72).

[Bahasa Malaysia summary

Pemohon telah ditubuhkan untuk mempertahankan agama Islam dan mengekalkan kesucian dan kekudusan ajaran Islam. Responden telah berdaftar dengan Suruhanjaya Syarikat pada 10 Jun 1993 sebagai 'SIS Forum (Malaysia)' dengan objektif mempertahankan hak wanita dalam Islam dan masyarakat. Saman pemula ini telah difailkan oleh pemohon untuk memohon, antara lain, perintah-perintah berikut: (i) bahawa 'Sisters in Islam' bukan nama mengikut undang-undang dan sah organisasi responden; (ii) bahawa responden dilarang daripada menggunakan nama 'Sisters in Islam' dalam apa-apa surat-menyurat atau penerbitan; dan (iii) agar responden mengeluarkan nama 'Sisters in Islam' daripada laman web, bahan cetak dan penerbitan responden. Pemohon berhujah bahawa responden menggunakan nama 'Sisters in Islam' telah membuat kenyataan yang bertentangan dengan ajaran, prinsip dan undang-undang asas Islam. Pemohon juga berhujah bahawa dengan menggunakan nama 'Sisters in Islam', responden menggambarkan dirinya sebagai organisasi Islam atau yang ia telah dibenarkan oleh Islam. Ini, menurut pemohon telah mengelirukan orang awam di Malaysia dan juga masyarakat antarabangsa, walhal realiti sebenarnya, adalah nama yang tidak didaftarkan dengan Suruhanjaya Syarikat Malaysia. Pemohon selanjutnya berhujah bahawa, dengan menggunakan nama 'Sisters in Islam' secara tidak sah responden menyebabkan, antara lain, kekeliruan, huru-hara awam dan tentangan dalam masyarakat, dan juga penghinaan terhadap agama Islam dan umat Islam di Malaysia. Responden memohon untuk membatalkan saman pemula di bawah A 18 k 19(1)(a), (b) atau (d) Kaedah-Kaedah Mahkamah Tinggi 1980.

Diputuskan, membenarkan permohonan responden dengan kos:

(1) Perkara yang diadukan oleh pemohon adalah berkaitan pelanggaran peruntukan Akta Syarikat 1965. Adalah jelas ia perkara berkaitan undang-undang awam. Pihak berkuasa yang sepatutnya menguatkuasakan apa-apa pelanggaran undang-undang berkaitan adalah pihak berkuasa awam, iaitu Suruhanjaya Syarikat Malaysia

('SSM'), yang diberi kuasa dan dibenarkan oleh undang-undang relevan yang berkaitan perkara itu. Selanjutnya, aduan pemohon berkaitan kejadian di mana responden membuat kenyataan yang bertentangan dengan prinsip dan ajaran asas agama Islam, adalah perkara yang berkaitan pentadbiran isu-isu Islam yang jatuh di bawah skop Majlis Agama Islam Wilayah Persekutuan. Pemohon bukan pihak berkuasa awam yang diberi amanah dengan penguatkuasaan peruntukan Akta Syarikat 1965 mahupun dalam pentadbiran perkara-perkara berhubung Islam (lihat perenggan 15–16, 18).

(2) Adalah undang-undang matan bahawa isu locus standi dikawal oleh dua rukun asas: (i) plaintiff hendaklah memiliki kepentingan dalam isu-isu yang dibangkitkan dalam prosiding; dan (ii) di mana plaintif persendirian bergantung kepada kepentingan hak awam dan bukan hak persendirian, kedudukan akan dinafikan melainkan jika peguam negara bersetuju kepada tindakan penyampai, atau plaintif boleh menunjukkan kepentingan istimewa melampaui apa yang dimiliki oleh masyarakat secara umumnya. Adalah prinsip penting bahawa hak persendirian boleh dipohon oleh individu, tetapi hak awam hanya boleh dipohon oleh peguam negara sebagai mewakili orang awam. Mahkamah tiada bidang kuasa dalam apa-apa keadaan untuk memberi plaintif hak untuk mewakili kepentingan awam (lihat perenggan 34–35); *Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12 dirujuk.

(3) Oleh sebab pemohon gagal untuk membuktikan bahawa ia mengalami kecederaan dan kerugian yang menjejaskan kepentingan persendiriannya secara langsung, pemohon tiada asas untuk memulakan prosiding terhadap responden. Juga tidak dibuktikan apa-apa kerugian istimewa khusus kepadanya yang membawa kepada campur tangan yang dikatakan terhadap hak awam yang memberikan pemohon kepentingan untuk memohon deklarasi dan/atau apa-apa perintah dalam tindakan ini (lihat perenggan 46).

(4) Tiada priviti antara pemohon dan responden, sama ada secara kontraktual atau tort, yang memberikan hak pemohon mendapat remedi terhadap responden daripada mahkamah, kerana tiada bukti apa-apa kecederaaan atau kehilangan yang telah diakibatkan terhadap pemohon oleh tindakan responden. Tiada dakwaan fakta mahupun apa-apa keadaan fakta yang dikemukakan ke mahkamah yang memberikan hak pemohon mendapat apa-apa remedi daripada mahkamah, akibat daripada hak-haknya yang telah dilanggari (jika ada). Oleh itu, jelas pemohon tidak menunjukkan kausa tindakan yang munasabah terhadap responden (lihat perenggan 68, 70–71).

(5) Tiada bukti huru-hara ataupun kekeliruan dalam masyarakat Islam, sama ada di peringkat negeri atau antarabangsa, yang dikatakan telah disebabkan oleh penggunaan nama 'Sisters in Islam' oleh responden dan

pandangannya yang mendapat publisiti berhubung perkara-perkara berkaitan Islam. Justeru itu tuntutan dan dakwaan tersebut tidak berasas, dan jelas remeh dan menyusahkan. Tindakan tersebut sudah tentu satu penyalahgunaan proses mahkamah (lihat perenggan 72).]

Notes

For cases on action, see 2(3) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 7428–7473.

For cases on locus standi in general, see 2(2) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 5187–5269.

Cases referred to

Australian Conservation Foundation Incorporation v Commonwealth of Australian [1979–801] 28 ALR 257 (refd)

Boyce v Paddington Borough Council [1903] 1 Ch 109 (refd)

Bradbury v London Borough Enfield [1967] 1 WLR 1311, CA (refd)

Durayappah v Fernando [1967] 2 AC 337, PC (refd)

Fitzgerald v Muldoon [1976] 2 NZLR 615, SC (refd)

George John v Goh Eng Wah Bros Film Sdn Bhd & 2 Ors [1988] 1 MLJ 319 (refd)

Gouriet v Union of Post Office Workers and Others [1977] 3 All ER 70, HL (refd)

Inland Revenue Commissioners v National Federation of Self Employed and Small Businesses Ltd [1982] AC 617, HL (refd)

Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors and another appeals [1997] 3 MLJ 23, CA (refd)

Lee v Enfield London Borough Council [1967] 66 LGR 195 (refd)

Lim Cho Hock v Government of the State of Perak, Menteri Besar, State of Perak and President, Municipality of Ipoh [1980] 2 MLJ 148 (refd)

Majlis Agama Islam Selangor v Bong Boon Chuen & Ors [2009] 6 MLJ 307; [2009] 6 CLJ 405, FC (refd)

Mohamed bin Ismail v Tan Sri Haji Osman Saat & Ors [1982] 2 MLJ 133 (refd)

Palm Oil Research and Development Board Malaysia & Ors v Premium Vegetable Oils Sdn Bhd [2005] 3 MLJ 97; [2004] 2 CLJ 265, FC (refd)

Pegang Mining Co Ltd v Choong Sam & Ors [1969] 2 MLJ 52, PC (refd)

R v Secretary of State for Trade and Industry ex parte Greenpeace Ltd (The Times 19 January 2000)

Syed Abbas bin Mohamed Alsagoff v Islamic Religious Council of Singapore [2010] 2 SLR 136, HC (refd)

Tan Sri Othman Saat v Mohamed bin Ismail [1982] 2 MLJ 177, FC (refd)

Thorson v Attorney General for Canada (No 2) (1974) 43 DLR 93(d) 1 (refd)

Government of Malaysia v Lim Kit Siang [1988] 2 MLJ 12; [1988] 1 CLJ (Rep) 63, SC (refd)

Prescott v Birmingham Corporation [1955] Ch 210, CA (refd)

Regina v Secretary of State for the Environment, ex parte Rose Theatre Trust Co [1990] 1 QB 504 (refd)

Legislation referred to

Administration of Islamic Law (Federal Territories) Act 1993 ss 4, 5
Companies Act 1965 ss 7, 7B, 7C, 7D, 22, 121
Federal Constitution art 2
Local Government Act 1976 ss 10(7), 165(1)
Rules of the High Court 1980 O 15 r 6, O 18 r 19(1)(a), (1)(b), (1)(d)
Specific Relief Act 1950 s 41
Supreme Court Rules [UK] O 53
Syariah Criminal Procedures (Federal Territories) Act 1997 s 23(2)

Mohamed Ibrahim Mohamad (Sahlan & Associates) for the applicant.
Malik Imtiaz (Azhar Harun & Richard Wee with him) (Richard Wee & Associates) for the respondent.

Zabariah Mohd Yusof J:

[1] Enclosure 6 is the respondent's application to strike out the originating summons of the applicant under O 18 r 19(1)(a), (b) or (d) of the Rules of the High Court 1980.

BACKGROUND

[2] The applicant is registered under the Companies Act 1965. It was established to uphold the religion of Islam and maintain the sanctity and the holiness of the teachings of Islam.

[3] The respondent is also registered under the Companies Act 1965. It was established with the objective of upholding the rights of women in Islam and society.

[4] It is undisputed that the respondent was registered on 10 June 1993 with the Companies Commission as 'SIS Forum (Malaysia)'.

[5] The originating summons herein was filed by the applicant to seek for the following orders from this court:

(a) A declaration that 'Sisters in Islam' is not the legal and valid name of the organisation of the respondent;

(b) an order that the respondent is prohibited from using the name of 'Sisters in Islam' that shows the identity of the respondent in any pamphlets, correspondences, publications and/or statements of the respondent be it in the internet, media and electronic publication until it is permitted by law to use the same; and

(c) an order compelling the respondent to remove the name 'Sisters in Islam' from the signboard of the respondent's website, printed materials and publications and prevent the respondent from distributing printed materials which uses the name 'Sisters in Islam' until the respondent was legally authorised to do so.

[6] The applicant contends that the respondent has contravened ss 22 and 121 of the Companies Act 1965 by using as its organisation's name and identity of:

(a) An unregistered name of 'Sisters in Islam'; and

(b) a controlled word 'Islam' where its use is limited by the Companies Commission,

in their many activities, inter alia,:

(a) article writings;

(b) publications,

(c) press statements,

(d) correspondences;

(e) membership forms; and

(f) advertised on its website.

[7] The applicant submits that the act of the respondent using the name of 'Sisters in Islam' has made statements that contravened the basic teachings, principles and laws of Islam.

[8] The applicant also alleges that there have been occasions where the respondent made statements which contravened the basic tenets and teachings of Islam for eg:

(a) The respondent has released on 18 February 2010 a press statement attacking the act of the prison department which carried out the whipping sentence on three Muslim women under s 23(2) of the Syariah Criminal Procedures (Federal Territories) Act 1997 (*Persetubuhan Haram*) reason being, that it is a discrimination to women.

(b) The respondent released other statements and publications on the covering of modesty (*aurat*) which is compulsory on Muslim women, polygamy in Islam, and the religion of underage child.

[9] The applicant further contends that by using the name of 'Sisters in Islam', the respondent portrays itself as an Islamic organisation or that it has been approved by Islam. This, according to the applicant has confused the

public in Malaysia as well as to the international community, whilst in actual reality, that name is not registered with the Companies Commission Malaysia.

[10] Further the applicant argued that nowhere does it state in the respondent's memorandum of association, that the mission and objectives of its establishment is for Muslim women but leans towards a feminist secular movement supporting gender equality. This is clearly in conflict with what has been published by the respondent on its website which is the first point of contact and is being read by the public in Malaysia and overseas.

[11] The applicant also argued that, by illegally using the name of 'Sisters in Islam' the respondent has created, inter alia, public confusion, chaos and resistance in the community, as well as humiliation towards Islam and Muslims in Malaysia.

[12] Enclosure 6 herein is the respondent's application to strike out the applicant's originating summons under O 18 r 19(1)(a), (b) or (d) of the Rules of the High Court 1980 on the following grounds:

(a) the applicant does not have locus standi to make such claim;

(b) that the originating summons does not disclose a reasonable cause of action;

(c) the applicant's claim is frivolous vexatious and scandalous; and

(d) it is an abuse of courts process.

THE COURTS FINDINGS

Issue on locus standi

Public law v private law

[13] A theory of law that governs the relationship between individuals (citizens, companies) and the state is 'public law'. The sub divisions of public law consist of constitutional law, administrative law and criminal law. This theory is in line with the concept of constitutional law, which mandates that all laws are to be specifically enabled, and thereby sub-divisions, of a Constitution.

[14] As for 'private law', it is the area of law in a society that affects the relationships between individuals or groups without the intervention of the state or government. The distinction between public and private law is confounded by laws that regulate private relations while having been passed by legislative enactment. These are generally known as laws of public order, as

private individuals do not have the right to break them and any attempt to circumvent such laws is void as against public policy.

[15] The matter complained of by the applicant herein is in relation to the contravention of the provisions of Companies Act 1965. These are clearly matters pertaining to public law. As such the proper authority that should be enforcing any contravention against the relevant laws would be the public authority, ie the Companies Commission Malaysia ('CCM'), which has been empowered and authorised by the relevant laws and legislations that relates to the matter.

[16] Further, the applicant's complaint is with regards to the occasions where the respondent made statements which contravened the basic tenets and teachings of Islam. These acts, even if true, are matters pertaining to the administration of Islamic issues which fall within the purview of the Majlis Agama Islam Wilayah Persekutuan.

[17] Both the matters fall within the purview of public law, the enforcement of which falls within the jurisdiction of the relevant public authorities.

[18] The applicant is not the public authority that is entrusted with the enforcement of the provisions of the Companies Act 1965 nor in the administration of Islamic matters.

[19] In *Palm Oil Research and Development Board Malaysia & Anor v Premium Vegetable Oils Sdn Bhd & Another appeal* [2005] 3 MLJ 97; [2004] 2 CLJ 265 the Federal Court states as follows with regards to public law:

> The relevant source of public law in our jurisdiction is the Federal Constitution, for it declares by its own terms in art 4(1) that it is the supreme law. It follows that what English lawyers refer to as administrative law or 'public law' has no separate existence dehors the Constitution in our jurisdiction. All principles of administrative law or public law must find their place within the Constitution. These principles are to be derived through an interpretation of those provisions falling within Part 11 of the Constitution which guarantee to our citizens all those fundamental rights that are inherent in all human beings. It is the solemn duty of the judicial arms of government—the courts who are the guardians of constitutional rights — to interprete the fundamental rights provisions in Part 11 of the Constitution prismatically, so that our citizens obtained the full benefit and value of those rights. And it is in this simple way, through the exercise of the court's interpretive jurisdiction that our public law gains momentum …

[20] Article (2) of the Federal Constitution provides that the ruler of a state shall be the head of the religion of Islam in his State and he enjoys all rights,

privileges, prerogatives and power as head of that religion. The manner and the extent of his powers are enshrined and subjected to the Constitution of the relevant State.

[21] As far as Wilayah Persekutuan is concerned, the head of the religion of Islam is the Yang di-Pertuan Agong. The administrations of Islamic Matters are provided by the Administration of Islamic Law (Federal Territories) Act 1993. Sections 4 and 5 of the same established the Majlis Agama Islam Wilayah Persekutuan. It defines the powers of the Majlis Agama Islam Wilayah Persekutuan and expressly states that it shall be a body to advise the Yang di-Pertuan Agong in matters relating to Islam. Majlis Agama Islam has the powers and authority to regulate matters pertaining to Islam. These powers were gazetted and hence it has legal and authoritative enforcement.

[22] The applicant does not have such similar gazetted powers. The fact that the applicant is acknowledged (*iktiraf*) by the government and JAKIM does not bestow upon the applicant such enforcement or regulatory powers. Nor can the mere objectives of the applicants that upholds the religion of Islam and maintain the sanctity and the holiness of the teachings of Islam, suffice. Imagine how chaotic that would be if every organisation in Malaysia with such objectives is to claim to have enforcement and regulatory powers in the absence of any statutes empowering them to do so.

[23] Therefore, unless Parliament or any state legislative assembly expressly vested within the public authority the power to regulate and administer matters pertaining to Islam, any other body cannot claim to have been bestowed directly or indirectly with such role.

[24] Similarly, the enforcement of any contravention of the provisions of the Companies Act falls within the purview of the CCM which has been empowered with regulatory function under the Companies Act 1965. This is clear upon perusing ss 22 and 121 of the same, where it provides that it is the Registrar of Companies or the Minister who is empowered to take action in any matter related to companies incorporated under the Act.

[25] The duties and powers of the registrar are provided under s 7 of the same. The registrar has the power to call for information on matters that he deems it fit. Power of inspection is provided for under s 7B where the registrar has the power to conduct inspections to ensure that any company registered under the Act complies with all the necessary provisions therein.

[26] Further powers of investigation against a person suspected to have committed an offence under the Act and examination of persons are provided for in s 7C and 7D respectively.

[27] Therefore from the provisions above stated, it is clear that the registrar is vested with the powers and authority to ensure that a company registered under the Act conforms to the provisions of the Act and the regulations thereunder.

[28] The applicant has alleged that the respondent has contravened the provisions of the Companies Act 1965 when it uses the name of 'Sisters in Islam' which was not the name that was approved by the Companies Commission of Malaysia. Clearly, the applicant cannot take it upon them to enforce any contravention of the provisions of the Companies Act. The applicant is not vested with any powers and jurisdiction to exercise powers of enforcement under the Companies Act 1965.

[29] The other contention of the applicant is that, the usage of 'Sisters in Islam' by the respondent is offensive, as it has been shown that the respondent has publicised its views on certain matters which are allegedly against the teachings of Islam.

[30] Firstly, it has not been established nor any ruling made that 'Sisters in Islam' had publicised matters which are against the tenets or teaching of Islam. As far as this court is concerned, this court is not the proper forum to determine what is or is not against the teachings of Islam.

[31] In any event, as far as matters pertaining to the enforcement of the usage of 'Sisters in Islam' and the impact on Islamic sensibilities as far as the role played by 'Sisters in Islam' is a matter within the purview of public law which can only be enforced by the relevant public authority that has been charged with the responsibility of Islamic affairs and sensibilities both at the federal and the state level.

[32] The applicant is certainly not the proper body to enforce such contravention committed by the respondent, even if it is proven to be true.

Whether the rights of the applicant has been affected

[33] This has a direct bearing on the issue of locus standi of the applicant to commence the action herein.

[34] Locus standi is the legal capacity or the right of a party to appear and be heard before an adjudicator. It is trite law that the issue of locus standi is governed by two fundamental rules:

(a) the plaintiff must possess an interest in the issues raised in the proceedings; and

(b) where the private plaintiff relies upon a public right interest and not of a private right, standing will be denied unless the attorney general consents to a relator action, or the plaintiff can demonstrate some special interest beyond that possessed by the public generally.

[35] It is a fundamental principle that private rights can be asserted by individuals, but public rights can only be asserted by the attorney general as representing the public. The courts have no jurisdiction in any circumstance to clothe a plaintiff with the right to represent the public interest (*Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12 at p 40; [1988] 1 CLJ (Rep) 63 at p 86).

[36] The reason for the setting of the rules in relation to locus standi is due to the scarcity of judicial resources. Liberalising the rules will result in floodgates to litigation by busybodies who does not have genuine legitimate grievance on the other.

[37] The contention of the applicant herein, is that the respondent had contravened ss 22 and 121 of the Companies Act 1965, when the respondent uses the name 'Sisters in Islam' in its daily operations and website. The respondent's legal name as approved by the Registrar of Societies is 'SIS Forum (Malaysia)'. Hence the name of 'Sisters in Islam' by the respondent is therefore illegal.

[38] The applicant's contention that as an NGO whose objective is to care and protect the sanctity of Islam, the applicant undoubtedly has an *interest* and co-relation with the respondent on the consequences that appear when the respondent uses the name 'Sisters in Islam' wrongfully. The applicant further argued that as an entity recognised by the government and the Jabatan Kemajuan Islam Malaysia (JAKIM), a body that conducts Islamic activities and expands *syiar* Islam, further strengthens the fact that the plaintiff has an interest in this action and thus can seek to stop the respondent from using the name 'Sisters in Islam' without the permission of the relevant authorities to the extent that it confuses the Muslim and the non-Muslim community in Malaysia and also on the international level.

[39] As far as the law is concerned, for the applicant to claim that it can bring an action in private law, the applicant must established that some private right has been impacted upon by the exercise of public law rights.

[40] In our case, it has not been shown what are the rights of the applicant which has been affected by the acts of the respondent. Nor has the applicant shown any injury or loss that it has suffered in purportedly acting for the interest of the Islamic community as a whole.

[41] There are occasions where a plaintiff can sue without obtaining the consent of the attorney general where there has been an interference of public right which have affected one's private right. In *Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12, at p 20; [1998] 1 CLJ (Rep) 63 at p 69:

> A plaintiff can sue without joining the attorney general in two cases: *first, where the interference with the public right is such as that some private right of his is at the same time intefered with* (eg where an obstruction upon the highway is specially affected by reason that the obstruction interferes with his private right to access from and to his premises to and from the highway): and, *secondly, where no private right is interfered with, but the plaintiff, in respect of his public right, suffers special damages peculiar to himself from the interference with the public right.*

[42] The above case sets out two situations where a plaintiff can sue without joining the attorney general. Applying the principle as set out above to our present case, as far as the first situation is concerned, there has not been 'any assertion of any infringement of contractual or a proprietory right, the commission of a tort, a statutory right of the breach of a statute which affects the plaintiff's interests substantially or where the plaintiff has some genuine interest in having his legal position declared, even though he could get no other relief …' (Refer to *Government of Malaysia v Lim Kit Siang*).

[43] As to the second situation, firstly, the applicant herein did not establish that there was an interference of public right, Secondly, even if there was a public right which had been interfered with, the applicant failed to show that, that interference has occasioned special damages peculiar to the applicant that give the applicant an interest, direct or otherwise. The case of *Majlis Agama Islam Selangor v Bong Boon Chuen & Ors* [2009] 6 MLJ 307; [2009] 6 CLJ 405 discusses the kind of interests which justify intervention. There, the respondents applied for judicial review against the decision of Majlis Bandaraya Shah Alam (MBSA') which had allocated 13.84 acres of land in the respondents' housing estate as a site for Muslim burial ground. The appellant, Majlis Agama Islam Selangor sought leave to intervene under O 15 r 6 of the Rules of the High Court 1980 ('MAIS'). The grounds relied upon by MAIS to establish that it has 'interest' for the said intervention in the main proceedings, is that it was a statutory body whose objectives were to, inter alia, aid and advice the Sultan to matters relating to the religion of Islam. It has the duty to promote, stimulate, facilitate and undertake the economic and social development of the Muslim community in the state of Selangor consistent with *Hukum Syarak*.

[44] It was the finding of the Federal Court in *Majlis Agama Islam Selangor v Bong Boon Chuen & Ors* that, despite the statutory status, powers, objectives

and functions of the appellant, it does not have 'direct' interest to intervene, although it has an 'indirect interest'. The Federal Court in its judgment said that:

> ... the basis of the appellant's purported interest in the present judicial review proceedings has been stated in terms which would appear to go beyond the scope of the provisions of the Enactment relied upon. *Matters of local government do not fall within the objects of MAIS.* MAIS had nothing to do with the decisions under challenge in the judicial review proceedings.
>
> *In any event, it is not directly affected by the decisions sought to be reviewed.*

[45] Further, the Federal Court in the same case, laid down certain principles that must be established before an intervention in the main proceedings can be allowed. One must have direct legal interest, not merely commercial interest to justify intervention. In the case of *Pegang Mining Co Ltd v Choong Sam & Ors* [1969] 2 MLJ 52, at p 55 where Lord Diplock in delivering his speech stated as follows:

> It has been sometimes said as in *Moser v Marsden* and in *In re Fabenindustrie AG* that a party may be added if his legal interests will be affected by the judgment in the action but not if his commercial interests only would be affected. While Their Lordships agree that the mere fact that a person is likely to be better off financially if a case is decided one way rather than another is not a sufficient ground to entitle him to be added as a party, they do not find the dichotomy between 'legal' and 'commercial' interests helpful. A better way of expressing the test is: will his rights against or liabilities to any party to the action in respect of the subject matter of the action be directly affected by any order which may be made in the action?

[46] Since the applicant herein, failed to establish that it has suffered injury and loss that affects its private interest directly, the applicant has no basis of commencing proceedings against the respondent. Nor is there shown of the existence of any special damage peculiar to itself owing to the alleged interference of a public right that would give the applicant an interest to seek a declaration and/or any order within this action.

[47] As to the allegation that the usage of the name Sisters in Islam by the respondent has caused confusion and negative consequence or tarnishing of Islam that occurred in the country or at the international community; these have not been established but are bare averments. Even, assuming for a moment, that those allegations are true, the applicant is certainly not the body that should prosecute the respondent.

[48] Although the applicant is an Islamic organisation that upholds the religion of Islam and maintains the sanctity and the holiness of the teachings of Islam, the applicant is no better than any other Islamic organisation in this

country whose objectives are the same with the applicant. Therefore the applicant cannot claim that it's right and interest is over and above the other organisations with similar objectives and aims, hence justifying it having an interest to give itself the requisite locus standi to sue the respondent.

[49] Similarly, as far as the realm of private law is concerned, there is no privity nor relationship between the applicant and the respondent which can form a basis for the action herein. This would fall under the second situation as enunciated by the case of *Government of Malaysia v Lim Kit Siang*.

[50] The applicant seemed to have the strong belief that the respondent had flouted the Companies Act 1965 and the tenets of Islam by expressing its views on certain matters. However, a belief (however strong) that the law generally or a particular law should be observed or that conduct of a particular kind should be prevented, does not suffice to give its possessor locus standi. This was enunciated in the case of *Australian Conservation Foundation Incorporated v Commonwealth of Australian* [1979–80] 28 ALR 257 where the suit was commenced to challenge the decision that approved the establishment of a resort and tourist area. The Australian Conservation Foundation (plaintiff therein) was a body that has interest and deeply involved with environmental issues. The High Court held that the plaintiff did not have the standing to sue and that 'an ordinary member of the public who has no interest other than that which any member of the public has in upholding the law has no standing to sue to prevent the violation of a public right or to enforce the performance of a public duty'. Further Gibbs J also said:

> A belief however strongly felt that the law generally or a particular law should be observed or that conduct of a particular kind should be prevented does not suffice to give its processor locus standi.

[51] As far as English cases are concerned, the law on locus standi was first declared by the highest court in England in 1977 by Buckley J in *Boyce v Paddington Borough Council* [1903] 1 Ch 109 who made a clear statement as far as 'locus standi' is concerned which was repeated by Salleh Abbas FCJ in *Government of Malaysia v Lim Kit Siang* which reiterated the point that a plaintiff can sue without joining the attorney-general in two cases ie firstly, an interference with the public right, such as that some private right of his is at and, secondly, where no private right is interfered with, but the plaintiff, in respect of his public right, suffers special damage peculiar to himself from the interference with the public right. This was accepted by the House of Lords in *Gouriet v Union of Post Office Workers and Others* [1977] 3 All ER 70. (Refer to the speeches of Lord Edmund Davies and Lord Fraser).

[52] About six months later, as a result of the new procedure of judicial

review being introduced by O 53 of the UK Supreme Court Rules, the law on locus standi in UK undergone a transformation ie a private citizen applying for a judicial review is required only to show that he has *sufficient interest* in the matter to which his application relates.

[53] The words 'sufficient interest' was given a wider interpretation and a different approach by the English Courts than the one enunciated in *Boyce v Paddington Borough Council*. Relator action ceases to have much meaning then.

[54] However, as far as the situation in Malaysia with regards to the law on the standing to sue, we rely on two judgments ie *Lim Cho Hock v Government of the State of Perak, Menteri Besar, State of Perak and President, Municipality of Ipoh* [1980] 2 MLJ 148 and *Tan Sri Othman Saat v Mohamad Ismail* [1982] 2 MLJ 177 which was described as the high water marks of the law of locus standi. In *Lim Cho Hock* the court held that the plaintiff has locus standi as a rate payer. Similarly in *Tan Sri Othman Saat* the court also held that the plaintiff has the capacity to sue. In fact the applicant cited these two cases as justifying that the applicant has sufficient interest to commence the suit herein against the respondent and urged the court to give a wider interpretation on the meaning of 'locus standi'.

[55] However those two cases need to be distinguished on its facts and the principles which were applied by the courts in reaching to its decision therein.

[56] In *Lim Cho Hock* the plaintiff was a member of Parliament for the constituency of Ipoh as well as a member of the Perak State Legislative Assembly for the constituency of Kepayang and a rate payer within the Ipoh municipality. The declarations which was sought by the plaintiff therein, inter alia, are to the effect that the offices of the Menteri Besar and the President of the Council cannot legally be held by the same individual, that the appointment of the Menteri Besar as President of the Council is inoperative and null and void, and that the State Authority has exceeded its powers in making this appointment. The plaintiff impugns the appointment of the Menteri Besar as the President of the Council on these grounds in the light of ss 10(7) and 165(1) of the Local Government Act 1976. Section 10(7) of the same provides that if the President does not agree with the other councilors as to the exercise of any of his powers or the powers of the local authority, he shall refer the matter to the Menteri Besar of the state whose decision thereon shall be final and binding on the local authority. Section 165(1) prescribes that in so far as it is relevant for the purposes of this case, that if it appears to the state authority to be necessary or desirable in the public interest that any function of a local authority or of an employee of such local authority should be forthwith transferred from such local authority or such employee, the state authority may by order published in the gazette transfer such function to the Menteri Besar of

the state. Abdoolcader J (as he then was) discussed at great length numerous authorities on the issue of locus standi in the Commonwealth (*Prescott v Birmingham Corporation* [1955] Ch 255, *Bradbury v London Borough Enfield* [1967] 1 WLR 1311, *Lee v Enfield London Borough Council* [1967] 66 LGR 195, *Durayappah v Fernando* [1967] 2 AC 337, *Thorson v Attorney General of Canada (No 2)* (1974) 43 DLR 93(d) 1,19, *Gouriet v Union Post Office Workers, Fitzgerald v Muldoon* [1976] 2 NZLR 615 and concluded that:

> In the light of the authorities I have discussed, I can see no reason to deny standing to the plaintiff as a ratepayer to institute and seek the relief he does in these proceedings.

[57] In *Tan Sri Othman Saat*'s case, the respondent, who was one of the applicants for state land and after waiting for eight years discovered that the land which he and the other applicants applied for, had been alienated to a number of undeserving individuals including the Menteri Besar of Johore. The respondent applied for declarations, mainly impugning the validity of the alienation of the land and named as respondents the State Director of Lands and Mines and the government of the State of Johore in addition to the appellant. The appellant mounted a challenge to the respondent's locus standi to sue and also on certain procedural objections, in his application to strike out the claim. The appellant's application was however dismissed in the High Court and he appealed to the Federal Court on the issue of the respondent's locus standi. Again Abdoolcader FCJ had the opportunity to review the cases with regards to standing to sue, and he approved *Lim Cho Hock*'s case by endorsing the concept of widening the scope of individual standing. At p 179 the learned judge said:

> The sensible approach in the matter of locus standi in injunctions and declarations would be that as a matter of jurisdiction, an assertion of an infringement of a contractual or a proprietary right, the commission of a tort, a statutory right or the breach of a statute which affects the plaintiff's interests substantially or where the plaintiff has some genuine interest in having his legal position declared, even though he could get no other relief, should suffice. When it comes however to the question of discretion on a consideration of the substantive application it may well be proper in particular cases to refuse a remedy to persons who, though they may have standing as a matter of jurisdiction on the lines we have indicated, do not merit it, perhaps because, inter alia, others are more directly affected, or the plaintiff himself is fundamentally not.

It was held by the Federal Court that the respondent therein had the locus standi to sue.

[58] In *Government of Malaysia v Lim Kit Siang* the respondent was a member of Parliament and the leader of the opposition. He had applied for a declaration that the letter of intent issued by the government to United

Engineers (M) Bhd ('UEM') in respect of the north and south highway contract is invalid and for a permanent injunction to restrain UEM from signing the contract with the government. The plaintiff filed his suit in the Penang High Court together with an ex parte summons in chamber for an interim injunction against UEM to restrain it from signing the contract. The application for the interim injunction was refused by the High Court. The respondent appealed to the Supreme Court, which ordered the interim injunction to be issued and at the same time directed an early trial of the suits. UEM and the government filed an application to the High Court to set aside the interim injunction and to strike out the suits on the ground that they disclosed no reasonable cause of action and also for lack of locus standi, in addition to being frivolous, vexatious and an abuse of the court's process. VC George J sitting as the High Court judge then, heard and dismissed the application. Both UEM and the government appealed to the Supreme Court. At the Supreme Court, the majority held that the respondent has no locus standi, whether as a politician, a road and highway user or a taxpayer.

[59] Both *Lim Cho Hock* and *Tan Sri Othman Saat*'s cases concluded that there was locus standi on the part of the plaintiff as there was some element of private interest or rights that have been infringed and protected. But one must be careful in applying *Tan Sri Othman Saat*'s case and the reliance on the English cases with regards to the standing to sue. This was clearly stated by Salleh Abbas LP in *Government of Malaysia v Lim Kit Siang* [1988] 1 CLJ (Rep) 63 at p 74 who in his judgment said the following:

> What is important about *Othman Saat*'s case *is that part of the judgment which dealt with the approach which the court should take when confronted with the question of locus standi.* (Emphasis added.)

[60] Further down at p 74, Salleh Abbas LP continued:

> I now come to the question whether as a taxpayer the respondent has locus standi to bring this suit against the government. According to *Smedley*'s case a tax payer had locus standi but that case like many other cases I referred to earlier was decided under the new procedure of judicial review introduced by RSC O 53 which enlarged the meaning of locus standi to 'sufficient interest'. But we have not adopted this new procedure in our High Court Rules. Therefore the question whether or not the respondent as a tax payer has locus standi to interfere in the NSH contract must, in my judgment, be answered in the negative.

[61] This was repeated by Abdul Hamid CJ in *Government of Malaysia v Lim Kit Siang*, at p 87 para f, who emphasised that, as far as Malaysia is concerned, the principle on locus standi to sue was correctly stated in *Mohamed bin Ismail v Tan Sri Haji Osman Saat & Ors* [1982] 2 MLJ 133 when he said that:

> the sensible approach in a matter of locus standi in injunctions and declarations would be to regard it as a matter of jurisdiction, where *there is an assertion of an infringement of a contractual or a proprietory right, the commission of a tort, a statutory right or a breach of a statute which affects the plaintiff's interest substantially* or where *the plaintiff has a genuine interest in having his legal position declared.* Indeed the principle enunciated there is consistent with the principle enunciated by Buckley J in *Boyce*. However in my view the courts in this country are not authorised by law to go beyond this principle. (Emphasis added.)

[62] Therefore, in determining the locus standi to sue, the court has to exercise caution in applying the English cases, which after 1977 has liberalised the scope of 'locus standi' due to the amendment to the UK Supreme Court Rules as mentioned in the preceding paragraphs. Subsequent judicial dictas have also shown that the court must also take into consideration the economic, political and cultural needs and background of individual societies within which the particular court functions. Societies' need and cultural/social/economic/political background varies from country to country, and fluctuate from time to time within the same country. It is upon these premises that views upon standing to sue in public law actions for declaratory or injunctive relief vary to suit according to the peculiar circumstances most suited to a particular country. A good example is the observation by Gopal Sri Ram JCA at p 40 in *Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors and other appeals* [1997] 3 MLJ 23 on the subject:

> Absent any statutory provision, locus standi — or standing to bring an action for a declaration in public law — is a matter of pure practice that is entirely for the courts to decide. Courts of some countries adopt a fairly lenient stance, while others insist on a stricter approach. In the United States, the pendulum of locus standi has swung from one extreme to another depending upon current judicial impression. Compare, for example, *Flast v Cohen* (1968) 392 US 83 with *Valley Forge College v Americans United* (1982) 454 US 464.
>
> The choice appears to really depend upon the economic, political and cultural needs and background of individual societies within which the particular court functions. As these are not uniform in all countries, and fluctuate from time to time within the same country, views upon standing to sue in public law actions for declaratory or injunctive relief vary according to peculiar circumstances most suited to a particular national ethos.
>
> I make these introductory remarks to demonstrate what I consider to be a vital policy consideration. It is this. When our courts come to decide whether to grant standing to sue in particular case, they must be extremely cautious in applying decisions of the courts of other countries because the reasons for granting or refusing standing in those other jurisdictions may depend upon the wider considerations to which I have referred in the preceding paragraph.

[63] It is to be noted that the English cases which were cited by the applicants

A are cases decided after 1977 which are not applicable to our situation as far as the principle of locus standi is concerned.

[64] The applicant also relied on *George John v Goh Eng Wah Bros Film Sdn Bhd & 2 Ors* [1988] 1 MLJ 319 which where Lim Beng Choon J held that:

B

> ... The extent of *sufficient interest* depends on diverse variable factors such as the content and intent of the statute of which contravention is alleged, the nature of the breaches of statutory power, the specific circumstances of the case, the nature and extent of the applicant's interest or grievance and the nature and extent of the prejudice or injury suffered by him. (Emphasis added.)

C

[65] It is to be noted that firstly, the decision of *George John v Goh Eng Wah Bros Film Sdn Bhd & 2 Ors* was that of a High Court, and that the case was decided on 8 July 1987. Further, there was no reference to the case of *Government of Malaysia v Lim Kit Siang*. I am of the view that the judgment in *George John* is not comprehensive enough to form a basis that can be relied on as far as the principle of locus standi is concerned.

D

[66] Further, one has to take note of the provision of s 41 of the Specific Relief Act 1950, which only entertains declaratory order coming from a plaintiff who is 'entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to the character or right, and the sourt may in its discretion make therein a declaration that he is so entitled …' Therefore under this provision the plaintiff must establish that he is a person entitled to any legal character or to any right as to any property at the time the action was instituted.

E

F

[67] From the authorities, so long as a plaintiff can prove that he is coming to court to assert his private rights or to repel a right asserted against him by another, only then, has he established his standing to sue (Refer to Lord Edmund Davis in *Gouriet v Union Post Office Workers and others* [1977] 3 All ER 70). The applicant in the instant case has not shown that it has genuine private interest to be furthered and protected.

G

H

Whether the applicant's claim discloses a reasonable cause of action

[68] There is no privity between the applicant and the respondent, be it contractual or in tort, that entitles the applicant to obtain a remedy against the respondent from the court, as there is no proof of any injury or loss that is caused to the applicant by the alleged acts of the respondent.

I

[69] 'Cause of Action' has been defined by Salleh Abbas LP in the case of *Government of Malaysia v Lim Kit Siang*:

A 'cause of action' is a statement of facts alleging that a plaintiff's right, either at law or by statute, has, in some way or another, been adversely affected or prejudiced by the act of a defendant in an action. Lord Diplock in *Letang v Cooper* [1965] 1 QB 232 at p 242 defined 'a cause of action' to mean 'a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person'. In my view the factual situation spoken of by Lord Diplock must consist of a statement alleging that first the respondent/plaintiff has a right either at law or by statute and that secondly such right has been affected or prejudiced by the appellant/defendant's act.

[70] There was no factual assertion nor any factual situation shown to the court that entitles the applicant for any remedy from the court, as a result of its rights that have been breached (if any).

[71] Therefore, clearly the applicant has not disclosed a reasonable cause of action against the respondent.

The action is frivolous and vexatious

[72] The respondent submits that the name 'Sisters in Islam' had been used by the respondent for the past 17 years since its incorporation. There was no proof of societal chaos nor confusion amongst the Islamic community, be it on a national level or internationally, that was allegedly caused by respondent's use of the name 'Sisters in Islam' and its publicised views on matters pertaining to Islamic matters. Hence these claims and allegations are unfounded, and clearly frivolous and vexatious. The action herein is certainly an abuse of process of the courts.

[73] What the applicant ought to have done is to voice its complaints to the CCM. It would then be left to CCM to initiate investigation and proceeds with the necessary action. In the event the CCM failed to take any action against the respondent, then may be some relief to be sought against the CCM.

[74] What the applicant is doing now is assuming the powers that are provided to CCM under the Companies Act 1965 or the Majlis Agama Islam Wilayah Persekutuan provided under the Administration of Islamic Law (Federal Territories) Act 1993, which the applicant cannot do. In the case of *Syed Abbas bin Mohamed Alsagoff v Islamic Religious Council of Singapore* [2010] 2 SLR 136 where the High Court of Singapore held that:

(2) The applicants had no locus standi under s 57 of the Trustees Act to seek appointment as trustees under s 42 of the same Act as they were neither beneficiaries nor duly appointed trustees of the Raja Siti Trust;

(3) Even if the applicants had locus standi under s 57 of the Trustees Act AMLA

empowered MUIS to administer all wakaf notwithstanding any provision to the contrary in any written law. To invoke s 42 of the Trustees Act is to remove MUIS from a position that it had been statutorily appointed to would be inconsistent with parliamentary intention.

[75] If one is to peruse through the facts of the English cases and the local cases mentioned in the preceding paragraphs, the challenge by the plaintiff in those cases was against the decision of a public authority which was said to affect the private rights of the plaintiff. For example in:

(a) *George John v Goh Eng Wah Bros Film Sdn Bhd & 2 Ors* the application was for an order of certiorari to quash the decision of the Board of Film Censors in approving the film publicity material bearing the title 'Happy Bigamist';

(b) *Regina v Secretary of State for the Environment, ex parte Rose Theatre Trust Co* [1990] 1 QB 504 was a challenge on the decision of the Secretary of state for the environment in declining to list the remains of a historical site to be listed in the Schedule of the Monuments and Archaeological Areas Act 1979;

(c) *R v Secretary of State for Trade and Industry ex parte Greenpeace Ltd* (The Times 19 January 2000), the challenge was on the decision to grant licence by the secretary of state, to companies who wish to search and bore for oil in the North east Atlantic Area;

(d) In *Inland Revenue Commissioners v National Federation of Self Employed and Small Businesses Ltd* [1982] AC 617, was an application for judicial review on the decision of the Inland Revenue Commissioners which introduced manner of tax deductions of workers of fleet street;

are, but some of the cases cited by the applicants to support the argument on locus standi. None of the cases cited above can be equated to the facts in our case herein. In the present case, the declaration sought is not against the relevant public authority where the subject matter of the challenge hinged on the decision that was made by the relevant public authority ie CCM or the Majlis Agama Islam Wilayah Persekutuan, but hinges on the alleged offensive act of another entity ie the respondent. Bearing in mind that, there is no relationship nor privy between the applicant and the respondent, hence prima facie there is no basis for the claim by the applicants against the respondent. The claim herein is clearly an abuse of the process of courts.

[76] Therefore premised on the above, the application by the respondent in encl 6 is allowed with costs.

Respondent's application allowed with costs.

Reported by Kanesh Sundrum